

MEMORANDUM

To: Social Security Advisory Board
Subject: Daniel Hatcher's *Foster Children Paying for Foster Care*
Date: December 11, 2014

The Board is writing a report on the SSI program for children with a special emphasis on children in foster care. The January Board meeting will focus on the SSI program and related topics. Daniel Hatcher, a professor at the University of Baltimore, will attend the meeting to discuss issues and recommendations related to the SSI program for children in foster care.

In Daniel Hatcher's law review *Foster Children Paying for Foster Care*, he examines the state's use of foster children's Social Security benefits to fund foster care agencies. He explains that private companies such as MAXIMUS, Inc. have developed revenue maximization strategies for states to use foster care children's SSI and survivor benefits as a state funding source. MAXIMUS helps foster care agencies apply to be representative payees for children who are eligible to receive SSI in order to access the children's Social Security benefits for state funding. States have saved \$12 million from the practice and MAXIMUS takes a 12.5% cut for its services.

SSA is required to find suitable representative payees, usually a parent or guardian, for children receiving SSI. According to SSA rules, state agencies are the least preferred representative payee for Social Security recipients. When one applicant files to be the representative payee for multiple beneficiaries, SSA uses a computer programming shortcut function called the "kiddie loop" to process applications faster and virtually automatically. Hatcher argues that the "kiddie loop" allows state agencies to easily become representative payees for large groups of foster children without further review for more suitable options.

The Supreme Court decision *Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler* upheld the state's use of foster children's Social Security benefits to reimburse state costs. The Supreme Court argued that state agencies would have less of an incentive to act as representative payees for children in foster care if they could not reimburse themselves. Hatcher counters that many state agencies fulfill the role as representative payee for disabled adults without the financial incentive of obtaining their benefits. Non-profit organizations that volunteer to be representative payees for adults could assist children as well. Regardless, it is Social Security's responsibility to find a representative payee for the children even if a state agency declines to do so.

The Supreme Court also argued that foster children's Social Security benefits provide a much needed source of revenue to foster care agencies. If the states could not use foster children's Social Security benefits for funding, all foster care children may be harmed. Hatcher argues that individual foster children should not be responsible for funding the foster care system as a whole. He continues to criticize the Supreme Court's decision throughout the law review and believes

that using foster children's Social Security benefits to reimburse the state is unlawful and does not fulfill the best interests of the children as SSA rules require. Rather than reimbursing the state, foster care children could use their Social Security benefits to provide more specialized assistance or prepare for independent living. Hatcher recommends restricting state agencies from reimbursing state costs with children's Social Security benefits and also suggests providing services to help children who receive SSI transition more easily into independence.